92-825

Supreme Court, U.S.
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No. 92-____

IN THE

Supreme Court of the United States

OCTOBER TERM 1992

ANTHONY T. LEE, *et al.*,

Petitioners,

V.

TALLADEGA COUNTY BOARD OF EDUCATION, *et al.*,

AND

UNITED STATES OF AMERICA

Respondents.

Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether -- contrary to the clear holding of this Court in *Board of Education of Oklahoma City Public Schools v. Dowell*, ___ U.S. ___, ___, 111 S. Ct. 630, 636 (1991) -- a district court's use of the term "unitary status" in an order dismissing a school desegregation case pursuant to the parties' stipulation, but not vacating or dissolving the existing injunctive decrees, "implicitly" dissolved all injunctive relief.

PARTIES TO THE PROCEEDING

In addition to the parties listed in the caption, the following persons were appellants in the court of appeals, individually and on behalf of all black children and their parents similarly situated:

Henry A. Lee, Detroit Lee, Hattie M. Lee, Palmer Sullins, Jr., Alan D. Sullins, Marsha Marie Sullins, Palmer Sullins, Della D. Sullins, Gerald Warren Billes, Heloise Elaine Billes, I.V. Billes, Willie M. Jackson, Jr., Mabel H. Jackson, Willie B. Wyatt, Jr., Brenda J. Wyatt, Willie B. Wyatt, Thelma A. Wyatt, Nelson N. Boggan, Jr., Nelson Boggan, Sr., Mamie Boggan, Willie C. Johnson, Jr., Brenda Faye Johnson, Dwight W. Johnson, Willie C. Johnson, Ruth Johnson, William H. Moore, Edwina M. Moore, L. James Moore, Edna M. Moore, Robert Judkins, Jr., Willie B. Wyatt, Jr., Patricia Jones, Shelby Chambliss, Carmen Judkins, Janice Carter, Ellen Henderson, Harvey Jackson, Wilmar Jones, John W. Nixon, Quintin Elston, Rhonda Elston, Tiffanie Elston, Augustus Elston, Cardella Elston, Ernest Jackson, Rayven Jackson, Rollen Jackson, Helen Jackson, Wendell Ware, John W. Ware, Jeffery Morris, Lela Morris, Vernon Garrett, Estella Garrett, Delicia Beavers, Loretta Beavers, Dorothy Beavers, Carla Jones, Paul Jones, Willie Jones, Bertha Jones, Leeorey Beavers, Ronnie Beavers, Stephanie Y. Hill, Connally Hill, Jacques Turner, William Tuck, Jr., Veronica Tuck, Danielle Jones, Donald Jones, Quinedell Mosley, Quinell Mosley, Kereyell Glover,

Delilah Glover, Tiffani Swain, Kedrick Swain, Terry Swain, Donyae Swain, Gwendolyn Swain, Darius Ball, Kierston Ball, Gwynethe Ball, Damien Garrett, Althea Garrett, Tonya Shepard, Mary Alice Jemison, Cora Tuck, Louise Tuck, Jerrk Evans, Kate Evans, Montina Williams, Richard Williams, Angie Williams, Roslyn Cochran, Johnnie Cochran, Quinton Morris, Datrea Morris, Torry Morris, Willie Morris.

In addition to the parties listed in the caption, the following persons and entities were appellees in the court of appeals:

Lance Grissett, Kenneth Armbrester, M. R. Watson, Gay Langley, Joseph Pomeroy, Larry Morris, Dan Limbaugh, Beulah Garrett, Cindy Allred.

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Petitioners,

V.

TALLADEGA COUNTY BOARD OF EDUCATION, *et al.*,

AND

UNITED STATES OF AMERICA

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioners, a class of black schoolchildren and their parents in Talladega County, Alabama, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered on June 15, 1992.

OPINIONS AND ORDERS BELOW

The June 15, 1992 opinion of the court of appeals is reported at 963 F.2d 1426 and is set out in the Appendix to this Petition (hereafter, "App."), *infra* 1a-14a. The August 13, 1992 order of the court of appeals denying rehearing is unreported (App. 32a-33a).

The district court's July 25, 1988 denial of Petitioners' Motion to Reopen (App. 15a-16a) and the accompanying Memorandum Opinion (App. 17a-19a) are unreported. The district court's March 13, 1985 entry and approval of a Joint Stipulation of Dismissal (App. 23a-28a) and accompanying Judgment and Order (App. 29a-31a) are also unreported.

JURISDICTION OF THIS COURT

The court of appeals issued its opinion and judgment affirming the district court's denial of Petitioners' Motion to Reopen this case (to enforce outstanding injunctive orders) on June 15, 1992 and denied Petitioners' timely application for rehearing on August 13, 1992. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

Fourteenth Amendment, Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Introduction

In *Board of Education of Oklahoma City Public Schools v. Dowell*, __ U.S. __, 111 S. Ct. 630, 636 (1991), and again in *Freeman v. Pitts*, __ U.S. __, 112 S. Ct. 1430, 1433-44 (1992), this Court acknowledged the confusion that flowed from the use of the term "unitary" to signal the end of a school desegregation case, and held that in order to terminate such a case a district court must find that the vestiges of the *de jure* system have been eliminated to the extent practicable. As the Court recognized, when a finding of unitariness is accorded constitutional dimension it carries enormous consequences and can seriously affect the ability of the courts and the black schoolchildren in their efforts to carry out the mandate of *Brown v. Board of Education*, 347 U.S. 483 (1954). *See Dowell*, __ U.S. at __, 111 S. Ct. at 636. In this case, the lower court -- contrary to the clear teachings of this Court -- inferred from facts virtually indistinguishable from those in *Dowell* that a reference to "unitary status" was sufficient to dispose of a case in its entirety and to eliminate all injunctive relief. This is not only contrary to *Dowell* and *Freeman*, but poses a threat to plaintiffs in school desegregation cases throughout the Eleventh Circuit and in other circuits as well.

Relevant Facts and Proceedings Below

This litigation, involving the Talladega County, Alabama school system, was originally commenced before a three-judge court in 1963 as part of the state-wide school

desegregation action.[1] The district court had jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1343(3). On February 3, 1970, the court entered various injunctive orders, including orders restraining the Talladega County school district from approving student transfers to other school systems if the effect would be to diminish the level of desegregation, either in the Talladega County district or in the district to which the student transferred,[2] and prohibiting the use of temporary classrooms in a manner that reinforced the dual school system.[3]

On November 7, 1983, the school district filed a Motion for Court to Relinquish Jurisdiction, which it thereafter amended by adding, as an exhibit, a Resolution of the Board adopted on November 22, 1983. No action was taken on this motion until March 12, 1985, when the parties filed a Joint Stipulation of Dismissal which provided that

> the School System amended this Motion [for Court to Relinquish Jurisdiction] by filing a resolution of the Talladega County Board of Education, adopted November 22, 1983, which

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[1]See *Lee v. Macon County Board of Education*, 267 F. Supp. 458 (M.D. Ala.)(3-judge court), *aff'd sub nom. Wallace v. United States*, 389 U.S. 215 (1967).

[2]See *Lee v. Eufala City Board of Education*, 573 F.2d 229 (5th Cir. 1978); *United States v. Lowndes County Board of Education*, 878 F.2d 1301 (11th Cir. 1989).

[3]On April 15, 1970, the three-judge court transferred the individual school systems that were the subject of the state-wide litigation to the respective federal judicial districts and divisions throughout Alabama in which they were located; the cases were assigned to single district judges for further proceedings. See *Lee v. Macon County Board of Education*, 448 F.2d 746, 748 n.1 (5th Cir. 1971).

> *commits the Board to maintaining a unitary, nondiscriminatory School System.* The Resolution is attached to this Stipulation as Exhibit A *and is incorporated herein.*

(App. 24a) (emphasis added). The parties agreed in the Joint Stipulation that dismissal of the action was appropriate "in view of the attached Resolution" (App. 24a). Neither the Stipulation nor the Resolution stated that outstanding injunctive decrees would be vacated or dissolved. In fact, the parties contemplated that the Board would continue to avoid practices that would perpetuate the dual system, as indicated by the incorporated Resolution which explicitly provides that the "Talladega County System shall be operated at all times so as to conform with . . . all previous orders of this Court . . ." (App. 27a).

On March 13, 1985, the district court "Approved" and "Entered" the Stipulation (App. 25a). On the same day, it issued a separate Judgment and Order, "pursuant to Fed.R. Civ.P. 54(b)" (App. 29a-31a), which the district judge subsequently described as a "redundancy," (App. 18a).[4] That order stated that the case was dismissed "[i]n view of" the Joint Stipulation of Dismissal (App. 29a), and that the school district had achieved "unitary status" (App. 30a). Like the Joint Stipulation and the Resolution, the separate Judgment and Order did not state that existing court decrees were vacated or dissolved.

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[4]The court of appeals ruled that "although labeled 'Judgment and Order,' [the Order] is not a judgment at all" (App. 14a). The court ruled that "[f]inal judgment in this case was entered against the TCBE in 1967 when the district court found that the Board was operating a racially segregated school system . . ." (App. 14a).

On July 22, 1988, Petitioners moved to reopen the case, seeking to enforce the court orders which they believed Respondents were violating (App. 15a-16a). Petitioners alleged a pattern of segregative and discriminatory actions by the Talladega County Board of Education after the 1985 dismissal, including racially discriminatory school closings and new construction by which the Board placed desegregated schools only in white communities, segregative use of temporary classroom facilities, and segregative inter-district transfers, all in violation of the outstanding court orders. In addition, plaintiffs challenged the Board's total failure to implement affirmative action programs with respect to faculty hiring as promised in the Resolution.[5]

On July 25, 1988, the district court denied the motion (App. 15a-16a). It stated that there were no injunctive orders remaining after dismissal of the case in 1985, and that there was no retention of jurisdiction that would permit the court to reopen the case or to grant relief from the order of dismissal (which the district court interpreted to have *ipso facto* extinguished all outstanding orders in the case) (App. 17a-19a); in other words, the court ruled that Petitioners had lost the benefit of the court orders entered for their protection by consenting to dismissal of the suit (although not to vacating or dissolving the orders) in 1985.[6] The district court ruled that Petitioners could challenge the

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[5]Plaintiffs' Memorandum of Points and Authorities in Support of Motion to Reopen, and Motions for a Preliminary Injunction and an Order Directing Compliance With Outstanding Court Orders and accompanying Exhibits filed July 22, 1988.

[6]In a subsequent order issued in August of 1988 denying Petitioner's Motion for an Injunction Pending Appeal, the district court ruled that the injunctive relief "necessarily" was vacated with the dismissal order (App. 22a).

school board's actions only by filing a new lawsuit and establishing a new federal Constitutional violation by again proving intentional discrimination (*see* App. 18a-19a).[7]

On June 15, 1992, the Court of Appeals for the Eleventh Circuit affirmed both the district court's refusal to reopen the case and its analysis of automatic or "implied" dissolution of injunctive decrees in school desegregation cases. The court's opinion states, in relevant part: "*By operation of law*, the orders enjoining the [School Board] were dissolved *when the district court declared that the school system had attained unitary status*." (App. 5a) (emphasis added). The court held that "[t]he attainment of unitary status means that school authorities have remedied their constitutional violation. . . . This finding *implicitly dissolved* the injunctions in effect at that time." (App. 8a) (emphasis added).

In sum, the court of appeals affirmed the order of the district court denying the motion to reopen, and ruled as a

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[7]Petitioners followed these directions and filed *Elston v. Talladega County Board of Education*, No. CV-88-H-2052-E (N.D. Ala.), which is pending on appeal before the Eleventh Circuit (No. 92-6033). However, Petitioners' rights are far from adequately protected by the opportunity to prosecute the new lawsuit. Under the ruling below, Petitioners have been stripped of their right to enforce valid orders which they obtained in the *Lee* litigation and which have never been withdrawn, such as the order barring inter-district transfers that increase the racial identifiability of a school. *See United States v. Lowndes County Board of Education*, 878 F.2d 1301 (11th Cir. 1989). As a result, despite a finding that a significant number of white students were obtaining interdistrict transfers to avoid a racially identifiable black school in Talladega County -- a clear violation of the court order -- the trial court denied relief. See Excerpt from Findings of Fact and Conclusions of Law, *Elston v. Talladega County Board of Education*, No. CV-88-H-2052-E (N.D. Ala., Sept. 19, 1989) (App. 34a-36a).

matter of law that the existing injunctive decrees were implicitly vacated when the district court used the term "unitary status" in connection with the dismissal in 1985. (App. 8a).

REASONS FOR GRANTING THE WRIT

The court of appeals has decided an important question of federal Constitutional law -- specifically, what is the proper manner in which injunctive decrees in school desegregation cases are to be vacated or dissolved -- contrary to the express holdings of this Court. The lower court proceeded to dispose of this case on the basis of a vague and clearly confused use of the term "unitary status." Correction of the error by this Court is imperative because the confusion it creates is likely to be repeated in the substantial number of similar cases still pending throughout the Eleventh Circuit and is necessary in order to carry out the mandate of *Brown v. Board of Education*.

A. The Ruling Below Directly Conflicts With Controlling Decisions Of This Court

In *Freeman v. Pitts*, ___ U.S. at ___, 112 S. Ct. at 1443, this Court stated:

> The duty and responsibility of a school district once segregated by law is to take all steps necessary to eliminate the vestiges of the unconstitutional *de jure* system. This is required in order to insure that the principal wrong of the *de jure* system, the injuries and stigma inflicted upon the race disfavored by the violation, is no longer present. This was

the rationale and objective of *Brown I* and *Brown II*.

Since the *Brown* decisions, the courts have been faced with questions of remedy and more recently with the question of the appropriate manner to resolve a desegregation case. This Court has required an affirmative showing of good faith compliance with court orders and of the elimination of the vestiges of the dual system to the extent practicable. *Dowell*, ___ U.S. at ___, 111 S. Ct. at 638; *Freeman*, ___ U.S. at ___, 112 S. Ct. at 1446.

In 1985, when the case at bar was dismissed, neither the district court by order nor the parties by stipulation stated that the existing injunctive decrees were vacated or dissolved. Rather, the district court approved the parties' Joint Stipulation "in view of" the incorporated school board Resolution committing the board to continue to comply with those orders. The commitment reflected the parties expectation that the orders remained in effect.

The court of appeals' conclusion that the district court "*implicitly* dissolved" the existing decrees by characterizing the school system in a separate order as having attained "unitary status" is flatly inconsistent with this Court's holdings from *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976) to *Board of Education of Oklahoma City Public Schools v. Dowell*, ___ U.S. ___, 111 S. Ct. 630, 636 (1991) and *Freeman v. Pitts*, ___ U.S. ___, 112 S. Ct. 1430, 1443-44 (1992). Indeed, the facts of *Dowell* are strikingly similar to those in the case at bar, but the results are directly contrary.

In *Dowell*, the district court entered an "Order Terminating Case" in 1977. The order recited that "substantial compliance with the constitutional requirements has been achieved" and that the school district was "unitary,"

but it did not vacate or dissolve injunctive decrees requiring implementation of a desegregation plan.[8] Plaintiffs did not appeal the 1977 order. *Dowell*, ___ U.S. at ___, 111 S. Ct. at 634.

In 1985, after the Oklahoma City school board abandoned the desegregation plan in the elementary grades, the *Dowell* plaintiffs moved to reopen the case. The district court's initial denial of this motion was reversed on appeal; on remand, the court again ruled against plaintiffs.[9] The district court held that the school system's "unitary status" in 1977 had not been altered by any new segregative act between then and 1985, even though the school district was no longer complying with the injunction. This ruling was again reversed by the court of appeals based on *Swift*.[10] *Dowell v. Board of Education of Oklahoma City Public Schools*, 890 F.2d 1483, 1498-99 (10th Cir. 1989), *rev'd*, ___ U.S. ___, 111 S. Ct. 630 (1991).

Although this Court rejected the applicability of the *Swift* requirement in order to vacate injunctive relief, it also rejected the notion that the use of the terms "unitary" or "unitary status" would be dispositive of the question whether

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[8]See App. 37a-39a [reprinting Order Terminating Case, *Dowell v. Board of Education of Oklahoma City*, No. CIV-9452 (W.D. Okla. Jan. 18, 1977)].

[9]The district court was instructed on remand to determine whether there were sufficiently "changed circumstances," under the test enunciated in *United States v. Swift & Co.*, 286 U.S. 106 (1932), to warrant modification or dissolution of the earlier injunctive decree. *Dowell v. Board of Education of Oklahoma City*, 795 F.2d 1516 (10th Cir.), *cert. denied*, 479 U.S. 938 (1986).

[10]See *supra* note 9.

school desegregation decrees should be withdrawn. "It is a mistake to treat such words as 'dual' and 'unitary' as if they were actually found in the Constitution. . . . We are not sure how useful it is to define these terms more precisely or to create subclasses within them." *Dowell*, ___ U.S. at ___, 111 S. Ct. at 636.[11]

In *Freeman*, the Court reemphasized its view of the limitations on the use of the term "unitary":

> It follows that we must be cautious not to attribute to the term a utility it does not have. The term "unitary" does not confine the discretion and authority of the District Court in a way that departs from traditional equitable principles.
>
> That the term "unitary" does not have fixed meaning or content is not inconsistent with the principles that control the exercise of equitable power. The essence of a court's equity power lies in its inherent capacity to adjust remedies in a feasible and practical way to eliminate the conditions or redress the injuries caused by the unlawful action.

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[11]The *Dowell* opinion noted that the lower federal courts had been ambiguous and inconsistent in their use of the terms "unitary," "unitary status," and "unitariness" as well as with respect to the consequences necessarily flowing from the use of those terms, and found the 1977 district court order in that case similarly unclear. ___ U.S. at ___, 111 S. Ct. at 636. It cited an earlier decision of the Court of Appeals for the Eleventh Circuit regarding the "confusion" about the meaning and significance of the terms. *Id.*, citing *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985)(decided after the dismissal order in the instant case).

112 S. Ct. at 1444.

In *Dowell*, the Court issued a clear ruling designed to eliminate the confusion fostered by the use of the term. The Court stated: "In *Pasadena City Bd. of Education v. Spangler*, 427 U.S. 424 (1976), we held that a school board is entitled to a rather precise statement of its obligations under a desegregation decree. *If such a decree is to be terminated or dissolved, respondents as well as the school board are entitled to a like statement from the court.*" *Dowell*, ___ U.S. at ___, 111 S. Ct. at 636 (emphasis added). Accordingly, the Court held that the 1977 "unitary" order "did not finally terminate the Oklahoma City school litigation," *id.*, and remanded the case so that the district court could determine whether *in 1985, when plaintiffs sought to reopen the suit*, there were any remaining vestiges of the prior dual system that could practicably be remedied. Only if the constitutional obligation of the school district to eliminate the vestiges of the *de jure* system to the extent practicable had been satisfied would dissolution of the underlying injunctive decrees be justified. *Id.* at ___, 111 S. Ct. at 638.[12]

It is precisely that inquiry -- in the face of Petitioners' allegations of post-1985 segregative and discriminatory actions by the school board -- which the courts below refused to undertake.[13] This result, wholly contrary to the "bright-line"

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[12]This Court ruled in both *Dowell* and *Freeman* that good-faith compliance with court orders was also a necessary prerequisite to dissolution of injunctive relief.

[13]Ironically, even though the court below delayed its decision in this case pending the announcement of the *Dowell* ruling (and requested the parties to submit supplemental briefs on its impact), it ultimately disregarded *Dowell*'s holding on the question here presented and found the words "unitary status" to be outcome-determinative.

rule fashioned in *Pasadena* and reiterated and amplified in *Dowell*, deprives Petitioners of the remedy that they earlier obtained in this action for the pervasive and long-maintained violation of their Fourteenth Amendment rights. Petitioners never consented to abandon these remedial measures,[14] and were never informed by the terms of any decree that they were being withdrawn. The direct conflict with this Court's ruling in *Dowell* is manifest. This injustice, and the need to preserve and enforce the binding effect of this Court's rulings upon the lower federal courts, require that a writ of certiorari

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[14]The court of appeals suggests that petitioners consented to a finding that the vestiges had been eliminated. In a footnote, the opinion states that the use of the term "unitary status" unambiguously meant that all vestiges of the dual system had been eliminated

> [i]n light of the parties' stipulation in 1985, upon which the district court relied, that the [School Board] "has complied in good faith" with all court orders and that "*there is not . . . any vestige of racial segregation remaining in the Talladega County System. . . .*"

(App. 8a n.3). In fact, the italicized quoted language is a statement *only* of the *School Board's* position:

> WHEREAS, *the Talladega County Board of Education has determined* that there is not now and has not been *since the adoption and installation of the desegregation plan of this system*, any vestige of racial segregation remaining in the Talladega County System . . . .

(App. 11a n.5) (emphasis added). Moreover, no party consented to dissolution of the injunctive relief and the Board committed itself to continue to comply with the court orders.

be granted in this case and the judgment below be reversed.[15]

B. The Ruling Below Will Affect Numerous Desegregation Cases That Are Still Pending In The Eleventh Circuit

As this Court recognized in *Dowell*, and the Court of Appeals for the Eleventh Circuit recognized in *Georgia State Conference of Branches*, 775 F.2d 1403, the term "unitary" has been used in an inconsistent and confusing manner in many of the pending cases. Failure to correct the erroneous ruling below at this time is likely to lead to its repetition in numerous other cases, thereby spawning additional appeals to the Court of Appeals for the Eleventh Circuit and to this Court.

A substantial number of school desegregation actions are still pending in the federal district courts within the Eleventh Circuit. In Georgia, for instance, as in Alabama, state-wide litigation involving a large number of school districts was brought.[16] In Florida, a significant number of suits remain pending.[17]

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[15]Indeed, the fundamental clash with this Court's *Dowell* ruling requiring a precise statement when injunctive decrees are being vacated or dissolved is so glaring that summary disposition is entirely appropriate.

[16]*See, e.g., United States & Ridley v. Georgia*, 428 F.2d 377 (5th Cir. 1970).

[17]*See, e.g., Bradley v. Pinellas County School Board*, 961 F.2d 1554 (11th Cir. 1992); *Jacksonville Branch, NAACP v. Duval County School Board*, 883 F.2d 945 (11th Cir. 1989).

The decision below, although inconsistent with other decisions of the same court of appeals[18] as well as with this Court's jurisprudence, may be applied as these cases approach the termination stages contemplated in *Freeman*. The decision below thus furthers the very confusion that this Court so recently sought to eliminate by enunciating a "bright line" rule in *Dowell* that requires a precise and explicit statement when an injunctive decree is being dissolved. This Court should correct the error now, before it is replicated and enlarged.

[18] *See, e.g., United States v. Board of Education of Jackson County*, 794 F.2d 1541, 1543 (11th Cir. 1986)("That school districts have become unitary, however, does not inevitably require the court to vacate the orders upon which the parties have relied in reaching that state.").

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted and the judgment below should be reversed.

Respectfully submitted,

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APPENDIX

ANTHONY T. LEE, et al.,
Plaintiffs-Appellants,

United States of America, Plaintiff-
Intervenor, Appellee

National Education Association,
Inc., Plaintiff-Intervenor,

v.

TALLADEGA COUNTY BOARD OF EDUCATION,
LANCE GRISSETT, KENNETH ARMBRESTER,
M. R. WATSON, et al., Defendants-Appellees.

No. 88-7471.

United States Court of Appeals,
Eleventh Circuit.

June 15, 1992

Appeal from the United States District Court for the Northern District of Alabama.

Before TJOFLAT, Chief Judge, CLARK*, and SMITH**, Senior Circuit Judges.

TJOFLAT, Chief Judge:

See Rule 32-2(b), Rules of the U.S. Court of Appeals for the Eleventh Circuit.

**Honorable Edward S. Smith, Senior U.S. Circuit Judge for the Federal Circuit, sitting by designation.

This is an appeal from an order of the United States District Court for the Northern District of Alabama denying the appellants' motion to reopen a school desegregation case so that the injunctive orders previously entered against the school system could be reinstated and enforced. Because we hold that the district court was without authority to reopen the case and that all relevant injunctions were dissolved in 1985, we affirm the district court's order.

I.

This case is part of a statewide class action brought in 1963 on behalf of black school children in Alabama to desegregate the public schools of that state. The appellee is the Talladega County Board of Education (the TCBE or the Board) which operates the Talladega County School System.[1] In 1967, the district court concluded that a dual school system based upon race was maintained and operated throughout the state. The court ordered statewide desegregation and directed each school system within the state to adopt a desegregation plan that met the standards set forth in the court's order. *Lee v. Macon County Bd. of Educ.*, 267 F. Supp. 458 (M.D.Ala.), *aff'd sub nom. Wallace v. United States*, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422 (1967).

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[1]This case began in 1963 in the United States District Court for the Middle District of Alabama as a class action seeking to desegregate the public schools of Macon County, Alabama. The next year, the appellants amended their complaint to include every school district in Alabama. In 1970, the district court divided the case into separate parts, each involving a separate school district, and transferred these parts to the district court having territorial jurisdiction over them. This case, involving the Talladega County School System, was transferred to the Northern District of Alabama.

In response to the court's 1967 order, the TCBE proposed a desegregation plan. This plan, however, proved ineffective and the district court ordered the Board to submit a new plan for the 1970-71 school year. The district court approved the plan subsequently submitted, as supplemented and modified, on February 3, 1970. Court orders later in 1970 and in 1971 modified this plan still further.

On November 7, 1983, the TCBE filed a "Motion for Court to Relinquish Jurisdiction," contending that the school system had become unitary and asking the court to relinquish jurisdiction and control over it. The Board later amended its motion by filing a "Resolution," which it had adopted on November 22, 1983, stating that the Board would operate the school system "at all times so as to conform with the United States Constitution, laws passed by Congress, and all previous orders of th[e district c]ourt...." The resolution also declared that the TCBE had complied in good faith with all court orders, had eliminated all vestiges of prior discrimination, and had been operating a "totally integrated, unitary system" for many years.

On March 13, 1985, the district court approved a "Joint Stipulation of Dismissal" agreed to by all the parties. The joint stipulation incorporated the TCBE's resolution. That same day, the court also entered a "Judgment and Order" stating that, in view of the parties' joint stipulation, the case should be dismissed. The court declared that the Talladega County School System had achieved unitary status, entered final judgment in accordance with Fed.R.Civ.P. 54(b), and dismissed the case. The court, however, did not dissolve explicitly the injunctive orders that had been entered against the TCBE.

More than three years after the district court dismissed this action, on July 21, 1988, the appellants moved

the district court to reopen the case, to reinstate the injunctive orders previously entered against the TCBE, and to grant them additional equitable relief. The motion contained three main allegations: (1) that the TCBE had engaged in racial discrimination by closing schools in the black community, changing the names of schools named after black persons, and planning new construction to avoid assigning white students to an historically black school; (2) that the Board had implemented a transfer policy that allowed students to attend school out of their assigned attendance zones or districts, which resulted in segregation in contravention of outstanding court orders; and (3) that the Board had not implemented promised affirmative action plans for faculty and staff.[2] To remedy this situation, the appellants asked the court to reinstate the injunctions previously entered in the case and to enjoin the Board's "illegal" school closings, its construction of new schools, and its approval of inter- and intra-district transfers. Finally, the appellants asked the court to require the Board to implement affirmative action plans for faculty and staff.

The appellants argued that the district court had jurisdiction to reopen the case and enforce its earlier orders for several reasons. First, they noted that the district court had not vacated expressly the earlier injunctions; thus, they argued, the outstanding orders remained binding on the Board. Second, they argued that, as part of the stipulated dismissal of the case, the Board had agreed to abide by all outstanding court orders; therefore, the appellants were entitled to return to court to enforce this agreement. Finally, the appellants argued that the case should be reopened pursuant to Fed.R.Civ.P. 60(b)(5) because there

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[2]The merits of the appellants' allegations are not at issue in this appeal.

"ha[d] been a fundamental change in the legal predicates upon which [the] dismissal [wa]s based." In relation to this last point, the appellants argued that when the district court issued its order declaring that the Talladega County School System had achieved unitary status, that term was not interpreted to mean that a school system had eliminated the vestiges of its prior discrimination and, thus, did not signal that the litigation involving the school district had run its course.

On July 25, 1988, the district court denied the appellants' motion to reopen the case. The court stated that when it dismissed the case in 1985 "there was no retention of jurisdiction by th[e] court and there remained no residual injunction requiring Talladega County Board of Education to do or not to do anything." The whole point of the dismissal, the court noted, "was to require that any party who found the dismissal erroneous do something about it *then*." The court concluded that the appellants could obtain the relief they sought only by filing a new lawsuit.

This appeal followed. We affirm the district court's order.

II.

We first reject the appellants' contention that the court orders enjoining the TCBE, because they were never expressly vacated, remain enforceable even though the district court has declared that the Talladega County School System has attained unitary status and has dismissed the case. By operation of law, the orders enjoining the TCBE were dissolved when the district court declared that the school system had attained unitary status. This is so because the limited nature of a federal court's remedial powers as well as the fundamental limitations of federalism render continuing

federal judicial supervision of local school authorities incompatible with a finding of unitary status. *See Board of Educ. of Oklahoma City Pub. Schs. v. Dowell*, __ U.S. __, __, 111 S.Ct. 630, 637, 112 L.Ed.2d 715 (1991); *United States v. Overton*, 834 F.2d 1171, 1174 (5th Cir.1987).

Injunctive decrees in school desegregation cases were never intended to operate in perpetuity. *Dowell*, __ U.S. at __, 111 S.Ct. at 637. Rather, federal supervision of a local school authority that has operated a racially dual system is a temporary measure that should last only as long as necessary to remedy past racial discrimination. *Id.* The purpose of a school desegregation decree is to effect a *transition* from a school system tainted with state-imposed segregation to a racially nondiscriminatory school system. *See Brown v. Board of Educ.*, 349 U.S. 294, 301, 75 S.Ct. 753, 756, 99 L.Ed.2d 1083 (1955); *Green v. New Kent County School Bd.*, 391 U.S. 430, 436, 88 S.Ct. 1689, 1693, 20 L.Ed.2d 716 (1968).

We stress the temporary nature of federal judicial supervision over local school systems "because '[n]o single tradition in public education is more deeply rooted than local control over the operation of schools. *Milliken v. Bradley*, 418 U.S. 717, 741, 94 S.Ct. 3112, 3125, 41 L.Ed.2d 1069 (1974) (*Milliken I*), and because no one's interest is furthered by subjecting the nation's educational system to 'judicial tutelage for the indefinite future.' *Dowell*, [__ U.S. at __, 111 S.Ct. at 638]." *Freeman v. Pitts*, __ U.S. __, __, 112 S.Ct. 1430, 1453, 118 L.Ed.2d 108 (1992) (Scalia, J., concurring). As the Supreme Court recently noted:

> Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system. When the school district and all state entities participating with

> it in operating the schools make decisions in the absence of judicial supervision, they can be held accountable to the citizenry, to the political process, and to the courts in the ordinary course.

Freeman, __ U.S. at __, 112 S.Ct. at 1445. *See also Dowell*, __ U.S. at ___, 111 S.Ct. at 637 ("Local control over the education of children allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs."). Thus, the "end purpose" of every court that supervises the disestablishment of a racially dual school system "must be to remedy the [constitutional] violation and in addition to restore state and local authorities to the control of a school system that is operating in compliance with the Constitution." *Freeman*, __ U.S. at __, 112 S.Ct. at 1445.

When local school authorities demonstrate that they have complied in good faith with the district court's desegregation decree and that the vestiges of their prior illegal racial discrimination have been eliminated to the extent practicable -- in short, that their school system has attained unitary status -- the court should and must return control over their school system to the local school authorities. *Dowell*, __ U.S. at __, 111 S.Ct. at 636-38. This rule follows from the settled principle that the remedial authority of the federal judiciary "may be exercised only on the basis of a constitutional violation." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16, 91 S.Ct. 1267, 1276, 28 L.Ed.2d 554 (1971), and is limited to redressing the constitutional violation itself. *Freeman*, __ U.S. at __, 112 S.Ct. at 1445. *See also Dowell*, __ U.S. at __, 111 S.Ct. at 637 ("The legal justification for displacement of local authority by an injunctive decree in a school desegregation case is a violation of the Constitution by the local authorities.");

Milliken v. Bradley, 433 U.S. 267, 282, 97 S.Ct. 2749, 2758, 53 L.Ed.2d 745 (1977) ("federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation"). The attainment of unitary status means that the school authorities have remedied their constitutional violation. The transition to a racially non-discriminatory school system is complete and the federal judiciary's remedial authority has come to an end.

In the instant case, the district court found in March 1985 that the Talladega County School System had achieved unitary status.[3] This finding implicitly dissolved the injunctions in effect at that time. Accordingly, when the appellants repaired to the district court in July 1988 seeking "to enforce existing court orders" against the TCBE, the court correctly concluded that there were no existing court orders applicable to the TCBE.

III.

The appellants also argue that they are entitled to an order compelling the TCBE to comply with the desegregation orders previously entered in this case because the joint

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[3]The appellants assert that district court's use of the term "unitary status" in its order dismissing the case is ambiguous; thus, this court should remand this case to the district court for a determination as to whether the TCBE had complied in good faith with the original desegregation decree, and whether the vestiges of past discrimination had been eliminated to the extent practicable. In light of the parties' stipulation in 1985, upon which the district court relied, that the TCBE "has complied in good faith" with all court orders and that "there is not ... any vestige of racial segregation remaining in the Talladega County System," we find no ambiguity in the district court's use of the term "unitary status."

stipulation of dismissal, in view of which the district court dismissed this case, incorporated the TCBE's resolution of November 22, 1983 in which the Board stated that it would continue to operate the Talladega County School System "so as to conform with ... all previous orders of th[e district c]ourt." The appellants' argument raises the issue of whether limitations on the federal judiciary's equitable powers, *see supra* Part II, would preclude a federal court from enforcing such an agreement. We need not and do not decide this issue today, however, because we hold that the language in the TCBE's resolution cannot be read as creating any enforceable obligation.

We cannot construe the joint stipulation, as the appellants would have us construe it, as either a "settlement agreement" or a "consent decree."[4] The stipulation of

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[4]The Joint Stipulation of Dismissal states in its entirety:

> By order dated February 3, 1970, the Court required the Talladega County School System to implement a plan of desegregation designed to convert the System to a unitary school system. On November 7, 1983, the Talladega County School System filed a Motion for Court to Relinquish Jurisdiction which claims that the School System has made every effort to fully implement and comply with the orders entered in this case. Subsequently, the School System amended this Motion by filing a Resolution of the Talladega County Board of Education, adopted November 22, 1983, which commits the Board to maintaining a unitary, nondiscriminatory School System. The Resolution is attached to this Stipulation as Exhibit A and is incorporated herein.
>
> The parties have reviewed the Motion of the Talladega County School System and its operation
>
> (continued...)

dismissal is not a contract between the parties but merely an acknowledgement by the parties that the Talladega County School System had achieved unitary status and, thus, that the injunctions against the TCBE were due to be dissolved and the case dismissed. Moreover, incorporation of the TCBE's resolution did not create an enforceable contract; when the resolution is read as a whole[5] and in the context of the

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[4](...continued)

> under the orders entered in this case. It is agreed by all the parties that these orders have been implemented in a manner that is adequate for establishment of a unitary school system in Talladega County.
>
> In view of this agreement and in view of the attached Resolution, the parties conclude that dismissal of this cause of action, as it applies to the Talladega County School System, is appropriate at this time.

[5]The Resolution of the TCBE states in its entirety:

> WHEREAS the Talladega County Board of Education was made a party to and has been subject to the orders and decrees of the United States District Court for the Northern District of Alabama in Case No. CA 70-251-S, which is styled Anthony T. Lee, et al., plaintiffs, United States of America and National Educational Association, Inc., plaintiff-intervenors, versus Macon County Board of Education, et al., defendants and said Court entered an order requiring the total integration of all schools in the Talladega County System as to students and faculty, and
>
> WHEREAS the Talladega County Board of Education, in accordance with said order and all other directives and decrees of this Court and the laws and regulations of the United States of America

(continued...)

[5](...continued)

has complied in good faith and there now exists in the Talladega County School System a totally integrated, unitary system and such system has existed for many years, and

WHEREAS, the Talladega County Board of Education has determined that there is not now and has not been since the adoption and installation of the desegregation plan of this system, any vestige of racial segregation remaining in the Talladega County System and the Board is adopting this resolution in support of its motion asking the Court to enter an order relinquishing jurisdiction and control over the operation of the Talladega County System.

NOW THEREFORE, in support of and in furtherance of said motion, BE IT RESOLVED that:

1. The Talladega County System shall be operated at all times so as to conform with the United States Constitution, laws passed by Congress, and all previous orders of this Court and the following paragraphs of this Resolution are adopted subject to this policy.

2. The Talladega County Board and its officers and employees shall never adopt any policy or program, institute any practice or procedure, or make or carry out any decision for the purpose of discriminating against any persons by reason of race, color, or ethnic identification and the following paragraphs are adopted subject to this policy.

3. The primary goal, objective and policy of this Board and all officers and employees of this School District is and shall continue to be to provide the maximum educational opportunity that can be made available to every student in every school of the Talladega County District by the prudent, efficient and effective use of the resources available to this School District.

(continued...)

contemplated dismissal of the case, it is plain that it did n
create any obligation enforceable against the TCBE.

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[5](...continued)

4. Every member of this Board, and all officers and employees of the Talladega County System shall continue to adopt, maintain and implement affirmative action programs designed to improve racial integration among students, faculty and administrative staff of the School System.

5. One of the factors to be taken into consideration in determining the desirability of a proposed policy, program, practice, procedure or decision of the Talladega County System is whether its adoption and implementation will tend to enhance racial integration among students, faculty, and/or administrative staff of the System.

6. It shall be the policy and practice of the Talladega County Board, its officers and employees and all those connected with this System to review the policies, programs, practices, procedures and decisions of the Talladega County System, from time to time, to see whether they appear to be having an adverse effect upon racial integration among the students, faculty and/or administrative staff of the School System and, should such an effect be apparent, to determine whether and how the policy, program, practice, procedure or decision of the School System may be modified without substantially impairing its educational efficacy so as to eliminate or diminish such adverse effect.

7. The Talladega County Board of Education will earnestly and in good faith endeavor to maintain a unitary school system with the utmost harmony and good will among all students, faculty members and the populace of the areas of Talladega County served by this System.

The language of the resolution suggests that it merely represents the good faith aspirations of the TCBE to continue to obey the law. While the resolution proclaims that the Board will act in conformity with previous court orders, neither the resolution nor the stipulation mentions anything about a party returning to court to enforce the court orders. To the contrary, the documents state repeatedly and explicitly that the time has arrived for this case to end. Indeed, the resolution was adopted in support of the TCBE's motion "asking the Court to enter an order *relinquishing jurisdiction and control* over the operation" of the school system. (Emphasis added.) The sense of finality in the resolution is inconsistent with the notion that a party would enjoy the right to petition the court years later to enforce earlier court orders. Finally, we are at a loss as to why the TCBE would ask the court to relinquish jurisdiction and control if this meant only that the TCBE would indefinitely remain subject to federal court supervision. In sum, the district court did not, as the appellants claim, "refuse to implement its own order." There was nothing for the court to implement after the March 13, 1985 dismissal on a finding of unitary status.

IV.

The appellants' final argument on appeal is that the district court abused its discretion in refusing to grant them relief pursuant to Fed.R.Civ.P. 60(b)(5). This rule provides for relief from a final judgment where "the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." The appellants contend that if the effect of a declaration of unitary status is the automatic vacation of all outstanding court decrees, that was not the law when this case was dismissed, is contrary to the intent of the joint stipulation, and reflects such a change in the underlying

predicates upon which dismissal was granted as to warrant relief from the judgment under Fed.R.Civ.P. 60(b)(5).

The district court did not abuse its discretion in denying the appellants' requested relief. Final judgment in this case was entered against the TCBE in 1967 when the district court found that the Board was operating a racially segregated school system in violation of the Constitution. At that time, the court enjoined the Board from operating a dual system in the future. The court's March 1985 order merely recognized that the TCBE had done all that it had to do to be freed of the court's supervision and implicitly dissolved the injunctions that the court had imposed in 1967. The March 1985 order is not a final judgment within the purview of Rule 60; indeed, the order, although labeled "Judgment and Order," is not a judgment at all. Moreover, this order has no prospective application. Thus, rule 60(b)(5), which applies only to judgments that have prospective effect, is inapplicable. *See Cook v. Birmingham News*, 618 F.2d 1149, 1152 (5th Cir.1980).

V.

Based on the foregoing, we AFFIRM the district court's denial of the appellants' motion to reopen, to reinstate the injunctive orders against the appellee, and to grant the appellants further equitable relief.

IT IS SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
88 JUL 22 PM 1:41
U.S. DISTRICT COURT
N.D. OF ALABAMA
C.T. CLIVER, CLERK

ANTHONY T. LEE, ET AL.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

CIVIL ACTION
NO. 70-AR-0251-S

NATIONAL EDUCATION
ASSOCIATION, INC.,

(Talladega County)

Plaintiff-Intervenor,

vs.

MACON COUNTY BOARD OF
EDUCATION, ET AL.,

ENTERED
JUL 25 1988

Defendants,

TALLADEGA COUNTY BOARD OF
EDUCATION, LANCE GRISSETT,
DAN LIMBAUGH, M.R. WATSON,
GAY LANGLEY, JOSEPH POMEROY,
and LARRY MORRIS,

Defendants.

PLAINTIFFS' MOTION TO REOPEN, AND MOTIONS FOR PRELIMINARY INJUNCTION AND FOR AN ORDER DIRECTING COMPLIANCE WITH OUTSTANDING COURT ORDERS

Plaintiffs respectfully petition the Court to reopen the above-styled case to enforce existing court orders and to grant them preliminary injunctive relief, as prayed for herein.

* * *

DENIED

/s/ WILLIAM M. ACKER, JR. JULY 25,1988

JUDGE **DATE**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTHONY T. LEE, ET AL.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

CIVIL ACTION NO.

70-AR-0251-S

NATIONAL EDUCATIONAL ASSOCIATION, INC.,

(TALLADEGA COUNTY)

Plaintiff-Intervenor,

VS.

ENTERED
JUL 25 1988

MACON COUNTY BOARD OF EDUCATION, ET AL.,

Defendants

MEMORANDUM OPINION

The predominant motive for the parties having sought and obtained the order which was entered by this court on March 15, 1985, was the parties' recognition of the jurisprudential principle that litigation, even including permanent injunctions with ostensibly unending reporting

requirements, must eventually come to an end. On March 15, 1985, this court formally dismissed this action, by consent of the parties, as against Talladega County Board of Education. The finding under Rule 54(b), F.R.Civ.P., was a redundancy, but made it perfectly clear, if it were not already clear, that this case was in all respects concluded as to Talladega County Board of Education, and that any party who disagreed with that conclusion had only the options of filing a post-judgment motion pursuant to Rule 59 or Rule 60, F.R.Civ.P., or taking an appeal to the Eleventh Circuit.

Plaintiffs who unequivocally consented to the order of March 15, 1985 now purport to move to reopen the case "to enforce existing court orders." There are no "existing court orders" in this case applicable to Talladega County Board of Education. The whole point of the dismissal of March 15, 1985, was to require that any party who found the dismissal erroneous do something about it then. On March 15, 1985, there was no retention of jurisdiction by this court and there remained no residual injunction requiring Talladega County Board of Education to do or not to do anything. After March 15, 1985, any violation of statutory or constitutional law by Talladega County Board of Education became the subject of a new and separate complaint.

Plaintiffs invoke neither Rule 59, F.R.Civ.P., nor Rule 60, F.R.Civ.P., because neither rule is available under the allegations made by plaintiffs, who conspicuously are not joined by plaintiff-intervenor, United States of America. Without invoking any procedural rule, plaintiffs ask that this case as to Talladega County Board of Education be resurrected from the dead.

The order of March 15, 1985, was, of course, not intended to give Talladega County Board of Education a license in the future to violate the principles announced in

Brown v. Board of Education and its progeny. It did, however, finally adjudicate the Board of Education's compliance with *Brown v. Board of Education* **up to March 15, 1985**. What Talladega County Board of Education has done or has failed to do to comply with the requirements of *Brown v. Board of Education* after March 15, 1985 must be addressed in a separate proceeding brought by a person or persons with standing to bring it.

The court finds it interesting that plaintiffs have indicated their intent to perfect timely appeals from recent similar orders of dismissal as to one or more other public educational entities previously under the injunctive supervision of this court. If plaintiffs can obtain the relief they now seek against Talladega County Board of Education three years after a final order of dismissal, current appeals from similar orders would seem to be unnecessary.

Appropriate separate orders will be entered. In light of the foregoing, the orders are obviously without prejudice to the presentation of the same matters in a new, separate complaint.

DONE this 25th day of July, 1988.

/s/ William M. Acker, Jr.
WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTHONY T. LEE, ET AL.,

Plaintiffs

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

CIVIL ACTION NO.
70-AR-0251-S

NATIONAL EDUCATION
ASSOCIATION, INC.,

(TALLADEGA
COUNTY)

Plaintiff-Intervenor,

VS.

MACON COUNTY BOARD OF
EDUCATION, ET AL.,

Defendants,

ENTERED
AUG 01 1988

TALLADEGA COUNTY BOARD OF
EDUCATION, LANCE GRISSETT,
DAN LIMBAUGH, M. R. WATSON,
GAY LANGLEY, JOSEPH POMEROY,
and LARRY MORRIS,

Defendants

ORDER

The court has been informed that plaintiffs have taken an appeal from the order of July 25, 1988. The court has for consideration plaintiffs' motion for an injunction pending that appeal.

Pursuant to Rule 62(c), F.R.Civ.P., this court "may, in its discretion . . . grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party." By separate order, the court will deny plaintiffs' motion for an injunction pending appeal for the following three separate and several reasons:

1. If, as this court held on July 25, 1988, it was without jurisdiction to entertain an untimely post-judgment motion, it is equally without jurisdiction to consider this motion.

2. To enjoin the construction of a proposed new school building with construction expected to begin in August, 1988, would not only require a serious hearing on the question of the probability of appellate success by plaintiffs, but at the very least it would require the posting of a very sizeable injunction bond in order to protect Talladega County Board of Education in the event such an interim injunction should prove erroneous.

3. Plaintiffs' assertion that "the filing of a new action, as suggested by the court in denying plaintiffs' motions, will not adequately protect plaintiffs in that it denies them the protection of the outstanding court orders"

presupposes the existence of outstanding court orders applicable to Talladega County Board of Education. This is the very question which was addressed by the order of July 25, 1988. The action as against Talladega County Board of Education was dismissed by consent in 1985. This necessarily meant, and still means, that there are no "outstanding court orders" in the above-entitled cause applicable to Talladega County Board of Education. A separate complaint seeking temporary or preliminary injunctive relief, contrary to plaintiffs' assertion, would afford plaintiffs an adequate opportunity for the protection here being sought by plaintiffs. By not availing themselves of the opportunity suggested by the court, the plaintiffs may be risking the bar of laches.

DONE this 30th day of July, 1988

/s/ William M. Acker, Jr.
WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FILED
March 12, 1985
United States District Court
Northern District of Alabama
James E. Vandegrift, Clerk

ANTHONY T. LEE, ET AL.,

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor and Amicus Curiae,

NATIONAL EDUCATION ASSOCIATION, INC.,

Plaintiff-Intervenor,

VS.

MACON COUNTY BOARD OF EDUCATION, ET AL.,

Defendants.

CA 70-251-S

(Talladega County School System)

JOINT STIPULATION OF DISMISSAL

By order dated February 3, 1970, the Court required the Talladega County School System to implement a plan of desegregation designed to convert the System to a unitary school system. On November 7, 1983, the Talladega County School System filed a Motion for Court to Relinquish Jurisdiction which claims that the School System has made every effort to fully implement and comply with the orders

entered in this case. Subsequently, the School System amended this Motion by filing a Resolution of the Talladega County Board of Education, adopted November 22, 1983, which commits the Board to maintaining a unitary, nondiscriminatory School System. The Resolution is attached to this Stipulation as Exhibit A and is incorporated herein.

The parties have reviewed the Motion of the Talladega County School System and its operation under the orders entered in this case. It is agreed by all parties that these orders have been implemented in a manner that is adequate for establishment of a unitary school system in Talladega County.

In view of this agreement and in view of the attached Resolution, the parties conclude that dismissal of this cause of action, as it applies to the Talladega County School System, is appropriate at this time.

Respectfully submitted,

/s/ Joseph D. Rich
Joseph D. Rich
Angela Schmidt
Attorneys for the United States

/s/ Solomon S. Seay, Jr.
Solomon S. Seay, Jr.
Attorney for Plaintiffs and
Plaintiff-Intervenor, the
National Education Association, Inc.

/s/ Ralph Gaines
Ralph Gaines
Attorney for Defendant

Approved this 13th day of March, 1985

/s/ William M. Acker, Jr.
UNITED STATES DISTRICT JUDGE

A True Copy
James E. Vandegrift, Clerk
United States District Court
Northern District of Alabama

ENTERED
MAR 13 1985

BY:/s/Martha M. McGill
DEPUTY CLERK

EXHIBIT "A"

RESOLUTION

WHEREAS the Talladega County Board of Education was made a party to and has been subject to the orders and decrees of the United States District Court for the Northern District of Alabama in Case No. CA 70-251-S, which is styled Anthony T. Lee, et al, plaintiffs, United States of America and National Education Association, Inc., plaintiff-intervenors, versus Macon County Board of Education, et al, defendants and said Court entered an order requiring the total integration of all schools in the Talladega County System as to students and faculty, and

WHEREAS the Talladega County Board of Education, in accordance with said order and all other directives and decrees of this Court and the laws and regulations of the United States of America has complied in good faith and there now exists in the Talladega County School System a totally integrated, unitary system and such system has existed for many years, and

WHEREAS, the Talladega County Board of Education has determined that there is not now and has not been since the adoption and installation of the desegregation plan of this system, any vestige of racial segregation remaining in the Talladega County System and the Board is adopting this resolution in support of its motion asking the Court to enter an order relinquishing jurisdiction and control over the operation of the Talladega County System.

NOW THEREFORE, in support of and in furtherance of said motion, BE IT RESOLVED that:

1. The Talladega County System shall be operated at all times so as to conform with the United States Constitution, laws passed by Congress, and all previous orders of this Court and the following paragraphs of this Resolution are adopted subject to this policy.

2. The Talladega County Board and its officers and employees shall never adopt any policy or program, institute any practice or procedure, or make or carry out any decision for the purpose of discriminating against any person by reason of race, color, or ethnic identification and the following paragraphs are adopted subject to this policy.

3. The primary goal, objective and policy of this Board and all officers and employees of this School District is and shall continue to be to provide the maximum educational opportunity that can be made available to every student in every school of the Talladega County District by the prudent, efficient and effective use of the resources available to this School District.

4. Every member of this Board, and all officers and employees of the Talladega County System shall continue to adopt, maintain and implement affirmative action programs designed to improve racial integration among students, faculty and administrative staff of the School System.

5. One of the factors to be taken into consideration in determining the desirability of a proposed policy, program, practice, procedure or decision of the Talladega County System is whether its adoption and implementation will tend to enhance racial integration among students, faculty, and/or administrative staff of the System.

6. It shall be the policy and practice of the Talladega County Board, its officers and employees and all those

connected with this System to review the policies, programs, practices, procedures and decisions of the Talladega County System, from time to time, to see whether they appear to be having an adverse effect upon racial integration among the students, faculty and/or administrative staff of the School System and, should such an effect be apparent, to determine whether and how the policy, program, practice, procedure or decision of the School System may be modified without substantially impairing its educational efficacy so as to eliminate or diminish such adverse effect.

7. The Talladega County Board of Education will earnestly and in good faith endeavor to maintain a unitary school system with the utmost harmony and good will among all students, faculty members and the populace of the areas of Talladega County served by this System.

I hereby certify that the foregoing Resolution was adopted at a regular meeting of the Talladega County Board of Education held in Talladega, Alabama, on the 22nd day of November, 1983.

/s/ Lance D. Grissett
Secretary to the Board

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ANTHONY T. LEE, et al.

Plaintiffs,

UNITED STATES OF AMERICA,

Plaintiff-Intervenor
and Amicus Curiae,

NATIONAL EDUCATION ASSOCIATION, INC.,

Plaintiff-Intervenor,

CA 70-251-S

(Talladega County School System)

VS.

MACON COUNTY BOARD OF EDUCATION, et al.

Defendants.

ENTERED
MAR 13 1985

JUDGMENT AND ORDER

The parties have submitted to this Court a Joint Stipulation of Dismissal. In view of this submission, it is appropriate that the above captioned case should be dismissed.

In accordance with Fed. R. Civ. P. 54(b), the Court finds that there is no just reason for delay in the entry of final

judgment against this Defendant and the Court therefore expressly orders that judgment be entered in this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Talladega County School System has achieved a unitary status and this case, as it applies to the Talladega County School System, is due to be, and hereby is dismissed.

Done this 13th day of March, 1985.

/s/ William M. Acker, Jr.
UNITED STATES DISTRICT JUDGE

Approved:

/s/ Joseph D. Rich
Joseph D. Rich
Angela Schmidt
Attorneys for the United States

/s/ Solomon S. Seay, Jr.
Solomon S. Seay, Jr.
Attorney for Plaintiffs and
Plaintiff-Intervenor, the
National Education Association,
Inc.

/s/ Ralph Gaines
Ralph Gaines
Attorney for Defendant

A TRUE COPY
JAMES E. VANDEGRIFT, CLERK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
BY: /s/Martha H. McGill
DEPUTY CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 88-7471

ANTHONY T. LEE, et al.,
Plaintiff-Appellant,
UNITED STATES OF AMERICA,
Plaintiff-Intervenor-Appellee,
NATIONAL EDUCATION ASSOCIATION, INC.
Plaintiff-Intervenor,
versus
TALLADEGA COUNTY BOARD OF EDUCATION, et al,
Defendant-Appellees.

On Appeal from the United States District Court for the Northern District of Alabama

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

Before: TJOFLAT, Chief Judge, CLARK, and SMITH*, Senior Circuit Judges.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be

polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

( ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Gerald Bard Tjoflat
UNITED STATES CIRCUIT JUDGE

ORD-42
(9/91)

*Honorable Edward S. Smith, Senior U.S. Circuit Judge for the Federal Circuit, sitting by designation.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

AUG 13, 1992

MIGUEL J. CORTEZ
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

[EXCERPT]

QUINTIN ELSTON, ET AL.,

PLAINTIFFS,

VS. CV88-H-2052-E

TALLADEGA COUNTY BOARD OF EDUCATION, ET AL.,

DEFENDANTS.

ENTERED
SEP 19 1989

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This action was tried before the court, without the aid of a jury, on August 21, 22 and 23, 1989. The matter is now under submission and the court herein sets forth its findings of fact and conclusions of law.

* * *

30. Significant numbers of white students who reside within the Talladega County Training School zone attend public schools in the Talladega City School system. This has occurred for many years and occurred long before the March 13, 1985 "unitary" order.

31. Dr. Grissett has not contacted school officials of the Talladega City School system in an effort to stop it from accepting into its system children who reside in the Talladega County Training School zone.

* * *

33. On April 19, 1979, the Justice Department notified counsel who represented both the Talladega City Board of Education and the Talladega County Board of Education that the Talladega City School system was governed by a provision in its school desegregation order that it should not consent to transfers where the cumulative effect would reduce desegregation in either district.

34. As required by state law, defendants have transferred school records of students leaving the Talladega County School system after they have enrolled in the Talladega City School system.

* * *

36. Defendants are aware of zone-jumping by white and black students alike. Many of the white students are likely avoiding historically black Talladega County Training School.

* * *

22. The extent of the "zone-jumping" in which Talladega County students are attending Talladega City or Sylacauga City schools is not known, but it involves a significant number of students, most of which are white but some of which are black.

* * *

DONE this 19th day of September, 1989.

/s/ JAMES H. HANCOCK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CIV-9452

ROBERT L. DOWELL, ETC., *et al.*,

Plaintiffs,

vs.

BOARD OF EDUCATION OF THE
OKLAHOMA CITY PUBLIC SCHOOLS, ETC., *et al.*,

Defendants.

[Filed Jan. 18, 1977]

ORDER TERMINATING CASE

There is now pending before the Court a Motion by the defendant to close the case. A hearing has been conducted by the Court to receive the evidence of both plaintiff and defendant concerning the state of desegregation in the Oklahoma City Public Schools.

The Court has carefully reviewed this evidence and all of the reports it has received from the defendant and the Biracial Committee since the inception February 1, 1972 of "A New Plan of Unification for the Oklahoma City Public School System," commonly known as the Finger Plan. The Court has concluded that this was indeed a Plan that worked and that substantial compliance with the constitutional requirements has been achieved. The School Board, under

the oversight of the Court, has operated the Plan properly, and the Court does not foresee that the termination of its jurisdiction will result in the dismantlement of the Plan or any affirmative action by the defendant to undermine the unitary system so slowly and painfully accomplished over the 16 years during which the cause has been pending before the Court.

Constitutional principles so bitterly contested by former members of the Board have now become a part of the fabric of the present school administration. The only standard ever imposed by the Court has been obedience to the Constitution. The School Board, as now constituted, has manifested the desire and intent to follow the law. The Court believes that the present members and their successors on the Board will now and in the future continue to follow the constitutional desegregation requirements.

Now sensitized to the constitutional implications of its conduct and with a new awareness of its responsibility to citizens of all races, the Board is entitled to pursue in good faith its legitimate policies without the continuing constitutional supervision of this Court. The Court believes and trusts that never again will the Board become the instrument and defender of racial discrimination so corrosive of the human spirit and so plainly forbidden by the Constitution.

ACCORDINGLY, IT IS ORDERED:

1. The Biracial Committee established by the Court's Order of December 3, 1971, which has been an effective and valued agency of the Court in the implementation of the Plan, is hereby dissolved;

2. Jurisdiction in this case is terminated ipso facto subject only to final disposition of any case now pending on appeal.

Dated this 18th day of January, 1977.

/s/ Luther Bohanon
United States District Judge